

REMARKS

At the time of the Office Action dated February 27, 2007, claims 1-24 were pending and rejected in this application.

Claims 5-7, 14-17, and 24 have been amended to address informalities. Care has been exercised to avoid the introduction of new matter, and Applicants submit that the present Amendment does not generate any new matter issue.

In the second enumerated paragraph on page 2 of the Office Action, the Examiner objected to the "abstract" and cited M.P.E.P. § 608.01(b). Although asserting that "ones of the" before "idle" should be deleted, the Examiner has failed to explain why this is improper. Applicants are not in a position to guess as to why the Examiner believes this section does not meet the requirements of 37 C.F.R. § 1.72. Since this language reflects the language of the claims, Applicants respectfully submit that Applicants have met the requirements of 37 C.F.R. § 1.72.

In the third enumerated paragraph on page 2 of the Office Action, the Examiner asserted that several terms were "unclear, inexact or verbose." With regard to subparagraphs a), b), and e), Applicants have amended the specification to address the issues raised by the Examiner. As to subparagraphs c), d), and f), Applicants disagree that these terms are "unclear, inexact or verbose." Moreover, Applicants note that the Examiner's rejection is bereft of analysis as to why

these terms are "unclear, inexact or verbose." Thus, Applicants respectfully solicit withdrawal of the imposed rejection of the specification under the first paragraph of 35 U.S.C. § 112.

In the fourth enumerated paragraph on page 3 of the Office Action, the Examiner asserted that "[t]he title of the invention is not descriptive." Applicants respectfully disagrees. Moreover, the Examiner has not explained why the Examiner believes the title of the invention is not descriptive.

**CLAIMS 1, 5, 7-8, 11, 15, 17-18, AND 21 ARE REJECTED UNDER THE SECOND
PARAGRAPH 35 U.S.C. § 112**

In the fifth enumerated paragraph on page 3-6 of the Office Action, the Examiner objected to claims 1, 5, 7-8, 11, 15, 17-18 and 21. This rejection is respectfully traversed.

Upon reviewing the Examiner's statement of the rejection, Applicants have amended the claims according to the Examiner's suggestions in subparagraphs e), h), k), l), q), u), x), cc), and hh). However, Applicants disagree with the Examiner's suggestions as to the remaining paragraphs. Applicants respectfully submit that the Examiner has failed to establish a prima facie case of indefiniteness under the second paragraph of 35 U.S.C. § 112. M.P.E.P. § 2173.02 states the following:

If upon review of a claim in its entirety, the examiner concludes that a rejection under 35 U.S.C. 112, second paragraph, is appropriate, such a rejection should be made and an analysis as to why the phrase(s) used in the claim is "vague and indefinite" should be included in the Office action. (emphasis added).

As stated in Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings,¹ "[o]nly when a claim remains insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite." The Examiner, however, has not established an interpretation of the claim in light of the specification or an interpretation of the claim as interpreted by one of ordinary skill in the art. Moreover, the Examiner has failed to set forth any analysis as to why the limitation(s) in the claim does not reasonably define the invention. Without the Examiner clearly defining the alleged problem and why it is a problem in connection with the issue of claim definiteness, Applicants cannot fairly evaluate the Examiner's position.

Applicants' position is that one having ordinary skill in the art would have no difficulty understanding the scope of the claims particularly when reasonably interpreted in light of the written description of the specification.² For example, the Examiner objected to the phrase "individual ones of said idle connections." This is a commonly used phrase-type in patent claims. The limitation being recited is "individual ones" and "of said idle connections" merely describes the "individual ones."

As another example, in subparagraph d) the Examiner requested "a" be replaced with "said individual" in line 8 of claim 4. Line 8 refers to "a timestamp of an oldest one of said idle connections." However, the timestamp of the oldest one of the idle connections has not been introduced yet into the claims. Therefore, it is proper to introduce that phrase with "a." The prior limitation in line 3 of "individual timestamps" does not provide antecedent basis for "a timestamp of an oldest one."

¹ 370 F.3d 1354, 1366, 71 USPQ2d 1081, 1089 (Fed. Cir. 2004).

² In re Okuzawa, 537 F.2d 545, 190 USPQ 464 (CCPA 1976); In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Therefore, for the reasons stated above, Applicants respectfully submit that the imposed rejection of claims 1, 5, 7-8, 11, 15, 17-18, and 21 under the second paragraph of 35 U.S.C. § 112 has been overcome and, hence, Applicants respectfully solicit withdrawal thereof.

In the sixth enumerated paragraph on page 6 of the Office Action, the Examiner objected to claims 13 and 23 under 37 C.F.R. § 1.75(c) for "failing to further limit the subject matter of a previous claim." Applicants respectfully disagree. Although the claimed "recording a timestamp in said connection pool for each added one of said idle connections to indicate when said added one of said idle connections had been added to said connection pool" had already been recited in claims 5 and 15, absent from claims 5 and 15 is the recitation that the claimed recording step is part of the adding step (i.e., "said adding step further comprises the step of recording ..."). Previously, claims 5 and 15 recited that the recording step was responsive to the adding step. Claims 13 and 23 further limit claims 5 and 15 by clarifying that the recording step is part of the adding step. Thus, Applicants respectfully solicit withdrawal of the imposed objection to claims 13 and 23 under 37 C.F.R. § 1.75(c).

CLAIMS 1-24 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON
BATRA, U.S. PATENT NO. 6,105,067, IN VIEW OF CHINTALAPATI, U.S. PATENT PUBLICATION
NO. 2002/0156897 (HEREINAFTER CHINTALAPATI)

On pages 7-14 of the Office Action, the Examiner asserted that one having ordinary skill in the art would have arrived at the claimed invention based upon the combination of Batra and Chintalapati. This rejection is respectfully traversed.

Claim 1

On page 7 of the Office Action, the Examiner admitted that the Examiner's primary reference of Batra fails to teach the following limitation:

a connection manager ... programmed to validate individual ones of said idle connections by issuing a non-blocking input/output (I/O) operation to each of said individual ones of said idle connections.

With regard to this limitation, the Examiner asserted the following in the paragraph spanning pages 7 and 8 of the Office Action:

In the same field- of endeavor, Chintalapati et al. discloses a mechanism for servicing connections by disassociating processing resources from idle connections and monitoring idle connections for activity wherein a poll adapter is able to use asynchronous (non-blocking input/output (I/O) operation) features of the operating system to monitor connections for activity. (paragraph [0023], paragraph [0024]).

Applicants note, however, that the teachings being relied upon Chintalapati do not suggest the claimed limitations. Specifically, completely absent from the teachings of Chintalapati is the notion of validating an idle connection by issuing a non-blocking I/O operation to the idle connection. Instead, Chintalapati teaches polling connections to determine whether or not events are pending and whether or not a connection is active or remains idle. Moreover, Chintalapati also describes closing connections that have been idle for a predetermined time period, which teaches away from the claimed invention.

The Examiner further asserted the following in the first full paragraph on page 8 of the Office Action:

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Chintalapati et al. into the teachings of Batra in order to validate individual idle connections by issuing an asynchronous (non-blocking~

operation. Such a feature would have made the overall system of Batra more efficient by not issuing blocking operations to idle connections that would waste resources in order to validate idle connections.

The Examiner, however, has failed to supply any factual support for these assertions. Instead, the Examiner's asserted benefit (i.e., "would have made the overall system of Batra more efficient by not issuing blocking operations to idle connections") for the proposed modification is pulled directly from Applicants' disclosure and is completely absent for the teachings of the applied prior art. It is well-established law that the "[d]etermination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention."³ Moreover, Applicants' disclosure is forbidden territory for the Examiner to obtain the requisite rationale for combining the applied prior art.⁴ Thus, Applicants respectfully submit that the Examiner has failed to establish a prima facie case of obviousness in rejecting claim 1.

Claim 2

Although the Examiner cited column 11, lines 45-54 and column 12, lines 1-4, 12-16, Applicants have been unable to discover any teaching of the claimed "an array configuration." Although the Examiner attempts to invoke the doctrine of inherency, this reliance upon the doctrine of inherency to disclose this feature is misplaced. Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient to establish inherency.⁵ To establish inherency, the extrinsic evidence must make clear that the missing element must necessarily be present in the thing

³ *ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 546, 48 USPQ2d 1321, 1329 (Fed. Cir. 1998).

⁴ *Panduit Corp. v. Dennison Mfg. Co.*, 774 F.2d 1082, 227 USPQ 337 (Fed. Cir. 1985).

⁵ *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981).

described in the reference, and that the necessity of the feature's presence would be so recognized by persons of ordinary skill.⁶ This burden has not been met. In this regard, the Examiner is also referred to M.P.E.P. § 2112, entitled "Requirements of Rejection Based on Inherency; Burden of Proof."

Claim 3

The Examiner took official notice of the fact that "it is notoriously well known in the art that idle connections could be stored in a data structure configuration for a last-in first-out (LIFO) ordering." Although the Examiner can take official notice of facts outside of the record, these facts must be of such a notorious character so as to be instantly and unquestionably recognized as "well-known" in the art.⁷ As also discussed in M.P.E.P. § 2144.03, Applicants have the right to challenge the Examiner's assertion as to the officially noticed facts. Upon such a traverse by Applicants, the Examiner is to cite a reference to support the Examiner's position. As such, Applicants traverse the Examiner's assertion of "official notice." Furthermore, even if the Examiner can establish that the claimed missing elements are "well-known" in the art, the Examiner is still failed to establish a rationale to combine, which is required for an obviousness rejection under 35 U.S.C. § 103.

Claims 5 and 15

On pages 9 and 10 of the Office Action, the Examiner admitted that the Examiner's primary reference of Batra fails to teach the following limitation:

⁶ Finnegan Corp. v. ITC, 180 F.3d 1354, 51 USPQ2d 1001 (Fed. Cir. 1999); In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999); Continental Can Co. USA v. Monsanto Co., 20 USPQ 2d 1746 (Fed. Cir. 1991); Ex parte Levy, 17 USPQ2d 1461 (BPAI 1990).

⁷ See M.P.E.P. § 2144.03.

responsive to determining that a timeout condition has arisen, probing at least one of said idle connections with a non-blocking input/output (I/O) request in order to validate said at least one of said idle connections.

With regard to this limitation, the Examiner asserted the following in the first full paragraph on page 10 of the Office Action:

In the same field of endeavor, Chintalapati et al. discloses a mechanism for servicing connections by disassociating processing resources from idle connections and monitoring idle connections for activity wherein a poll adapter is able to use asynchronous (non-blocking input/output (I/O) operation) features of the operating system to monitor connections for activity. (paragraph [0023], paragraph [0024]).

This is the same language the Examiner employed with regard to claim 1, and Applicants incorporate herein, as also applying to claims 5 and 15, the arguments previously presented by Applicants as to claim 1. Specifically, completely absent from the teachings of Chintalapati is the notion of validating an idle connection by issuing a non-block I/O operation to the idle connection. Instead, Chintalapati teaches polling connections to determine whether or not events are pending and whether or not a connection is active or remains idle. Moreover, Chintalapati also teaches closing connections that have been idle for a predetermined time period, which teaches away from the claimed invention.

In addition the to other limitations previously mentioned, claims 5 and 15 also recite that the probing step is "responsive to determining that a timeout condition has arisen." A teaching of this limitation is completely absent from Batra and Chintalapati, either alone or in combination.

The Examiner further asserted the following in the second full paragraph on page 10 of the Office Action:

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Chintalapati et al. into the teachings of Batra in order to validate individual idle connections by issuing an asynchronous (non-blocking) operation. Such a feature would have made the overall system of Batra more efficient by not issuing blocking operations to idle connections that would-waste resources in order to validate idle connections.

As also noted with regard to claim 1, the Examiner has failed to supply any factual support for these assertions as to claims 5 and 15. Instead, the Examiner's asserted benefit (i.e., "would have made the overall system of Batra more efficient by not issuing blocking operations to idle connections") for the proposed modification is pulled directly from Applicants' disclosure and is completely absent for the teachings of the applied prior art. Thus, Applicants respectfully submit that the Examiner has failed to establish a prima facie case of obviousness in rejecting claims 5 and 15.

Therefore, for the reasons stated above, Applicants respectfully submit that the imposed rejection of claims 1-24 under 35 U.S.C. § 103 for obviousness based upon Batra in view of Chintalapati is not viable and, hence, solicit withdrawal thereof.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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